IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET.
SECOND APPEAL NO.1089 OF 2004

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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CORAM: A.S.OKA,J.
DATE : FEBRUARY 9, 2005.

P.C.:

1. Heard Shri Dalvi appearing for the Appellants/original Defndant Nos.2 and 3. He submitted that the house property in respect of which the decree for partition was passed was held by Gopala i.e. deceased father of Respondent No.1-Plaintiff. He submitted that the Respondent No.1-Plaintiff being the daughter of deceased Gopala was a Class-I heir under the Hindu Succession Act, 1956. He further submitted that therefore, the Appellate Court committed an error by holding that the suit will not be hit by Section 23 of the said Act of 1956 as Respondent No.1-Plaintiff Bhamabai is claiming to be a Class-II heir of deceased Gunda,son of Gopala.

2. It is an admitted position that Gopala has expired prior to coming into force the said Act of 1956. Therefore, the Respondent No.1 being daughter of Gopala cannot be said to be Class-I heir under the said Act of 1956. From the averments made in the plaint, it is crystal clear that the Respondent No.1 filed a suit for partition claiming to be Class II heir of deceased Gunda being his sister. In this view of the matter the Appellate Court is right when a finding was recorded that the bar created under section 23 of the said Act will not come in the way of the Respondent No.1 as she is not a Class I heir of deceased Gunda.

3. No substantial question of law arises in the Second Appeal and the same is dismissed with no order as to costs.

JUDGE.